



POLICE DEPARTMENT

May 9, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Detective John Juliano
Tax Registry No. 888887
Staten Island District Attorney's Squad
Disciplinary Case No. 82950/07

The above-named member of the Department appeared before me on January 25, 2008, charged with the following:

1. Said Detective John Juliano, assigned to the Staten Island District Attorney's Squad, on or about January 7, 2007 at approximately 0100 hours engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective engaged in a [REDACTED] physical altercation with a person known to the Department in that he shoved said individual causing her to fall to the ground and hit her head. (*As amended*)

PG 203-10 Pg. #1 Para #5 GENERAL REGULATIONS

The Department was represented by Michelle Blackman, Esq., Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge and a stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

INTRODUCTION

On January 7, 2007, the Respondent and his [REDACTED] [REDACTED] ([REDACTED]), were having [REDACTED] problems that went as far as the Respondent serving her with [REDACTED] papers. On that date, she arrived home at 1:00 a.m. in an intoxicated state after being out with a girlfriend. Hearsay testimony indicated that due to her intoxication she had difficulty standing and fell down several times while attempting to navigate her home. Her intoxicated condition notwithstanding, [REDACTED] filed a complaint with the Department alleging that the Respondent pushed her to the floor where she struck her head. Their son, [REDACTED] was present in the house and was a witness to the alleged pushing of his mother by his father.

While [REDACTED] initiated disciplinary charges against the Respondent, she failed to appear at the Departmental trial to testify in support of her allegations. The Assistant Department Advocate (Advocate) spoke to her on January 18, 2008, and explained the importance of her and her son's testimony. She agreed to meet with the Advocate on January 22, 2008 to discuss the case, but she did not keep the appointment. According to the Advocate, on January 23, 2008, she received a telephone message from [REDACTED] "indicating that she decided that she and her son would not be testifying and she would not go forward" with her allegations.

[REDACTED] was subsequently subpoenaed to appear at trial, which included have Department investigators calling her on the telephone and going to her home. She did not respond to the calls and was not at home when the investigators arrived. Her reluctance to appear and have her son appear caused the Advocate to rely on a hearsay case to support the allegations against the Respondent.

SUMMARY OF EVIDENCE SUBMITTEDThe Department's Case

The Department called Sergeant Tobia Hunter-Clark.

Sergeant Tobia Hunter-Clark

Hunter-Clark is a 12-year member of the Department currently assigned as an investigator in the Chief of Detectives Investigations Unit. Hunter-Clark testified that she was assigned the Respondent's case on January 18, 2007, where the complainant, [REDACTED] "alleged that the [Respondent] shoved her during the course of an argument, a [REDACTED] dispute."

Hunter-Clark conducted a telephone interview of [REDACTED] on Monday January 22, 2007. [REDACTED] informed Hunter-Clark that a few days prior to their conversation the Respondent served her with divorce papers. She also told Hunter-Clark that after 22 years of marriage she was very upset by the fact that the Respondent was engaged in an [REDACTED] with one of his co-workers, a female who was younger than him.

[REDACTED] told Hunter-Clark that the incident between her and the Respondent occurred on January 7, 2007. She stated that it was a Saturday night going into Sunday morning and it occurred after she went to a bar with one of her friends and returned home at approximately 0100 hours. She stated "that she was under the influence of alcohol. She said when she arrived home, she didn't have her keys but her friend did help her, come with her to the door." When she rang the bell her son, [REDACTED] opened the door to let her in. The Respondent was also present at home and came to assist her as she entered the house. [REDACTED] further stated that the Respondent was angry because he saw that she was under the influence of alcohol and told her "how could you come home like this, like what's wrong with you, how could you come home like this?" The Respondent nevertheless attempted to help her into the house but did so

"aggressively." While [REDACTED] stated that he aggressively helped her she elaborated only by saying that he grabbed her arm, with no further explanation as to how he "aggressively" helped her.

Hunter-Clark stated that, according to [REDACTED] the area of the house where the Respondent was helping her was in the living room and to Hunter-Clark's knowledge there are two floors to the house and the living room is on the first floor. [REDACTED] also told Hunter-Clark that at one point "she went upstairs to go to the bathroom, and while she was in the bathroom, she started taking off her boots, at which time she stated that the boots fell and she believed that the sound caused the subject officer and the son to come upstairs to make sure she was okay.... She further stated that when they came to the door to make sure that she was okay, she came out, told them that she was fine and he, Detective Juliano, attempted to assist her. She started arguing with him by stating along the lines of like, 'Don't help me, help your girlfriend,' and that's how their argument started" by the upstairs bathroom.

Hunter-Clark further stated that [REDACTED] told her that as they were arguing they were walking through the house and they eventually ended up between the kitchen and the dining room area. Hunter-Clark acknowledged that they went from the upstairs level to the downstairs level of the house and that they were arguing the entire time. When asked specifically what they were arguing about Hunter-Clark stated "nothing specific, just the same thing that they have been arguing about."

Hunter-Clark further learned from this interview that at one point the Respondent and his wife were in the kitchen area which leads into the dining room area and their son went into the living room and sat on the couch to watch television. Hunter-Clark further stated that they continued to argue. "They were within close proximity of each other and they get into a, I guess, a tug and war. There was physical contact made at the point." [REDACTED] stated that "they were up in each other's face and he grabbed her and he shoved her.

█ further explained to Hunter-Clark that "she was in his face, her hands were in his face, but she did not state that she physically touched him. When he shoved her, it caused her to fall back and she stated that the left side of her head, by her temple area, hit the saddle that separates the kitchen to the dining room...the saddle being the wooden part that goes between the kitchen and the dining room." It was further clarified that the saddle is that wooden board on the floor where the door to the room closes on top of.

Hunter-Clark stated that she was informed by █ that when she was shoved to the floor her son ran into the area and yelled to the Respondent "something like 'What are you doing?'" At which point, according to █ the son punched the Respondent in the eye and pushed him out of the way and went to help his mother up off the floor. █ did not receive any medical attention even though she claimed that she sustained a bruise to the left side of her head in the temple area.

Hunter-Clark was also informed that after her son helped her off the floor █ and the Respondent continued to argue but there was "no other physical contact or anything after that between the two. █ then went back upstairs and changed her clothes and called the police. Hunter-Clark acknowledged that the only physical contact that was aggressive between █ and the Respondent was at the time in the kitchen area where she claims that he shoved her.

Hunter-Clark also testified that on that same day, January 22, 2007, after she interviewed █ she also had a telephone interview with █ who was present in the house during his mother's interview. "He stated that he and his father were sitting on the couch watching television when his mother arrived home at approximately 0100 hours, and he and his father went to the door and he helped her, assisted her inside. He stated that she went upstairs and they heard a noise from upstairs. He stated that he and his father, Detective Juliano, went upstairs to

make sure she was okay. He said he heard a commotion...like a loud noise. They went upstairs and found that she was okay. As she was exiting the bathroom, then his parents started arguing."

██████ told Hunter-Clark that he was present on the second floor when his parents began to argue. He also stated "that at that time she did fall and he helped her up, and then... his parents went back to arguing and he went back [downstairs] to the living room." According to ██████, at that point, his mother fell on her own accord and they both helped her up. And it was after she fell that the Respondent and she started arguing. He did not know what they were arguing about because he went back to watching television.

██████ further told Hunter-Clark that at one point he was in the living room and his parents were in the kitchen area. "Then he states that, I guess, his attention was drawn to them while they were arguing, and when he looked over in their direction, he sees them tussling with each other and his exact words were that they were 'tangled up with each other' at which point, then he saw his father shove his mother causing her to fall." Hunter-Clark stated that the son did not elaborate on how he saw his father shove his mother, "he just said his father shoved his mother." He then saw his mother fall to the floor and "he said went over to them, intercepted his parents, moved his father back and helped his mother." ██████ also told Hunter-Clark that his parents were in close proximity to each other and that his mother was on the floor when he approached them. He was not specific in his explanation as to what his parents were doing he just said that "he moved his father away and he helped his mother." He also never indicated that his mother hit his father at any point during the altercation.

When asked by the court if ██████ described in any detail how they were grabbing or tussling with one another Hunter-Clark replied "no. During our conversation, he was a bit reserved. In my opinion, he sounded upset, so I didn't want to - - I know it was a very sensitive subject for him, so I just respected that he didn't want to..." ██████ further told Hunter-Clark

that his parents went upstairs and they continued to argue. While he did not indicate how long they were arguing, he did tell Hunter-Clark that his mother arrived at 0100 hours and the police responded at 0120 hours.

Hunter-Clark testified that she never met [REDACTED] or [REDACTED] in person. She stated that the reason for not meeting with them was that "from interviewing the both of them, they were a bit reluctant and she was nervous, she was scared, and I don't think she felt comfortable with the situation. And she didn't feel comfortable with me speaking to the son. She was very protective and she wanted to minimize his involvement because it was a very compromising situation, he is having to talk about his mother and his father, so she just wanted to limit the interaction."

Hunter-Clark also stated that [REDACTED] indicated to her that she was taking "[REDACTED] for [REDACTED] stemming from the situation in her [REDACTED]

On cross-examination, Hunter-Clark acknowledged that the interview worksheets that she prepared in this case and the source of her testimony, were drafted from the hand written notes that she took contemporaneously with the telephone interviews of [REDACTED] and [REDACTED]. She further acknowledged that the worksheets were not word for word of her written notes and that the information she received from [REDACTED] and [REDACTED] was based on that single conversation that she had with them on January 22, 2007. She further acknowledged that she spoke with [REDACTED] from 1445 hours to 1510 hours for a total of 25 minutes and with her son for approximately 5 minutes. She added that at one point she knew that [REDACTED] was at home while she was interviewing [REDACTED] because she was told by [REDACTED] that her son was at home. Hunter-Clark, however, could not say for certain if the son was present and listening to their conversation as she was interviewing [REDACTED], but that it was very possible that he could have been in the same room during the interview.

Hunter-Clark testified that it was clear from everyone that she spoke to in this investigation that [REDACTED] was "intoxicated" the night of the incident including her son who stated that his mother "came home drunk" that night. Hunter-Clark also stated that [REDACTED] said, in describing herself that night that she was "tipsy."

[It should be noted that Hunter-Clark was asked a series of questions regarding what the officers who responded to the Respondent's home that night -- Police Officer Currie-Dillon, Police Officer Patrick Kelly and Patrol Supervisor Sergeant Adrienne Rivera -- observed while at the scene. Since it was learned by this Court during the trial that Hunter-Clark did not actually interview those officers, but was testifying from a review of the transcripts of their interviews by other investigators, this Court decided not to include what she gleaned from those interviews because the best evidence would be the actual transcripts of their interviews, which were subsequently made available to the Court and admitted into evidence. The statements from those transcripts are noted in this opinion. Therefore this Court decided not to use the hearsay statements from Hunter-Clark regarding those officer's statements.]

When Hunter-Clark was asked by the Court if [REDACTED] told her that she fell down after the officers arrived Hunter-Clark stated "no, because once she stated that the police arrived and they interviewed her, than I didn't ask anything else afterwards because I know the police were on the scene." When asked by the Court if [REDACTED] ever told her that she fell in the bathroom Hunter-Clark replied "she stated that she didn't fall in the bathroom." When Hunter-Clark was asked if [REDACTED] upset about her impending [REDACTED] and the Respondent's infidelities, could be characterized as unbiased towards the Respondent she responded by saying that [REDACTED] was hurt, but at the same time she was concerned how this incident would affect his job. It didn't appear to me that she was trying to be vindictive. She was very hesitant because she didn't want him to be hurt by this, penalized....She told her side of the story and her version of what transpired.

Hunter-Clark acknowledged that [REDACTED] admitted to her that she was “hysterical” on the night of the incident and further “admitted that she was arguing, that she was loud, that she was hysterical. She did not try to take anything away from what part she played and that she was intoxicated. If she did say she was hysterical, she was admitting her actions in the incident.”

Hunter-Clark further acknowledged during her interview with the son, he indicated that the Respondent shoved his mother and caused her to hit the floor, but he did not actually indicate that he witnessed any injuries caused to [REDACTED] based on the shove.

[It should be noted on re-direct examination that questions were asked of Hunter-Clark as to what Police Officer Currie-Dillon and Police Officer Kelly stated in separate interviews with other investigators regarding what they witnessed when they responded to the location. As previously stated this Court has reviewed the transcripts of their statements and has indicated what they stated in this opinion.

The Respondent's Case

The Respondent offered the out-of-court statements made by Police Officer Currie-Dillon, Police Officer Kelly and Sergeant Adrian Rivera and the transcripts of their statements were admitted into evidence under Respondent's Exhibits (DX) A, B and C respectively. The Respondent testified in his own behalf.

Official Department Interview of Police Officer Currie-Dillon¹

Currie-Dillon was interviewed on January 7, 2007, by investigators from the Brooklyn South Investigations Unit. Currie-Dillon who is assigned to the 68 Precinct, was working a

¹ The transcript mistakenly refers to the officer's name as “Curry.”

"2315 by 0750" tour on January 7, 2007. She told investigators that when she responded to [REDACTED] at approximately 0138 hrs with her partner P.O. Kelly, she observed a male (the Respondent) putting clothes into a car. Currie-Dillon asked the Respondent if he called the police and he told her that he "was on the job" and it was hi [REDACTED] who had made the call. His [REDACTED] ([REDACTED]) who was at the front door of the house then called to the officers and they went to speak to her.

Currie-Dillon described [REDACTED] as being "very intoxicated" and further stated that she "wouldn't let us in the house at that time, made us stand outside and told us that her and her [REDACTED] were arguing and that he pushed her." She told Currie-Dillon, that her [REDACTED] was upset that she had come home drunk.

Currie-Dillon further told investigators that "She fell down about four stairs and her son actually caught her and she argued with him like John, get off me, get off me and we're like look, he's helping you. And she was also falling whenever she got up, I mean, she would fall into the wall....She's walking in the house, she fell on top of me, because she's intoxicated, she's falling all over the place. At one point she's getting dressed she came down the stairs and fell down the stairs. Then she wanted to brush her teeth in the bathroom downstairs and ...I made sure the door stayed open while she was in there, and she said this is where it all started, 'I was taking those boots off' and there were boots in there and she goes 'I was brushing my teeth and I fell right here and I hit my head.' I said oh, so this is where you hit your head? She goes 'yeah, but I also fell out there too.'"

Currie-Dillon stated that she observed a bump on the left side of [REDACTED]'s head, but she refused medical aid. Currie-Dillon said the Respondent had a bump on his head, but she did not make any further inquiries with respect to his injury, nor did she question him as to what occurred. Currie-Dillon also did not speak with the son who was present during the incident.

Currie-Dillon stated that she called the Sergeant and prepared a DIR (Domestic Incident Report) an aided card and a 61 (Complaint Report) for Harassment but [REDACTED] refused medical aid.

When Currie-Dillon was asked "And again your...determination was that she was intox?" she replied "Yeah." When asked if [REDACTED] was "Extremely Intox?" she responded "I would say so yeah, it was pretty embarrassing." (RXA)

Official Department Interview of Police Officer Kelly²

P.O. Kelly was also interviewed on January 7, 2007, by investigators from the Brooklyn South Investigations Unit. P.O. Kelly is assigned to the 68 Precinct, and worked a "2315 by 0750" tour on January 7, 2007. He told investigators that when he and his partner Currie-Dillon responded to [REDACTED] at 0138 hrs. He observed the Respondent putting some clothes into a vehicle. P.O. Kelly stated the Respondent told him that his [REDACTED] called the police and that she was in the house. He also told him that he was a member of the Department. The Respondent did not discuss what occurred and P.O.'s Kelly and Currie-Dillon went inside the house to speak to his [REDACTED]. P.O. Kelly stated that [REDACTED] was "very intoxicated. She fell on my partner on the way up the stairs. And then she was stumbling up the stairs to get changed, because at that time she was just in a robe, and my partner was kind of helping her going up the stairs and then on the way back down, we stayed downstairs, the son went upstairs with her, and then when she was on her way back down, we heard her falling down the stairs, and her son was then in the stairway. She fell coming down the stairs and she was going to come to the precinct and she was stumbling all over."

² The transcript mistakenly refers to the officer's name as "Terry."

P.O. Kelly stated that she complained about a bump on her head, but he could only see "a little red" on her head. He stated that the photographs of her head also showed "maybe a little red." He also saw a bump on the Respondent's head. While [REDACTED] was in the house, P.O. Kelly did not discuss the incident with him.

[REDACTED] told P.O. Kelly that when she arrived home, she became involved in an argument with her husband and a scuffle ensued. P.O. Kelly also stated that [REDACTED] indicated that the Respondent pushed her. He further stated that the apartment did not appear to be in disarray and that the Respondent appeared fit for duty. (RXB)

Official Department Interview of Sergeant Adrian Rivera

Rivera was interviewed on January 7, 2007 by investigators from the Brooklyn South Investigations Unit. Rivera, who is assigned to the 68 Precinct, was working a 1200 x 0800 tour on January 7, 2007. Rivera told investigators that his assignment was Patrol Supervisor and he responded as a "backup" to [REDACTED] at approximately 0145 hrs. Rivera indicated that he was informed by the responding officers, Currie-Dillon and Kelly, of a [REDACTED] dispute between the Respondent and his [REDACTED] ([REDACTED]).

According to Rivera, the officers informed him that the Respondent and his son were watching a movie when [REDACTED] came home intoxicated, and they had to help her through the house. "She was stumbling on the way to the bathroom; they brought her to the bathroom where she had stood in the bathroom a few minutes....the father and son stated that ...they had knocked on the door a few times to make sure that she was okay. They heard a couple of banging, a couple of sounds of like banging....they finally opened the door...she stated that as she came out of the bathroom she tripped or stumbled and hit the wall and then there was a verbal dispute between the husband and her and also swinging...as a matter of fact I believe she stated that she

was swinging at him and he put up his hands to block her swings, and...during this time while he was blocking the swings I guess pushed her or she fell down to the floor and she stated, well she stated ...twice that as she exited the bathroom she tripped, bumped her head and then she said while her and her husband were swinging at each other, she was thrown to the floor and she bumped her head." Rivera noted that the statements he attributed to [REDACTED] were told to him by her. While [REDACTED] told him that she had a bump on her forehead, Rivera "couldn't tell whether it was a bump or if it was something natural or whatever, but I did see a slight bump."

Rivera made it clear to the investigators that [REDACTED] gave two different versions as to how she bumped her head. Rivera explained that "she told me as she was exiting the bathroom she tripped over the ...saddle between the bathroom and the kitchen. And when she tripped on the saddle she hit her head against the wall. And right after she said that to me she said that she got into a verbal altercation with her husband and she started swinging at him and then she said, she stated that he shoved her to the ground and that's how she bumped her head."

The Respondent told Rivera that he was home watching a movie with his son. At "approximately 0130 the wife [REDACTED] came home...rang the door bell because she didn't either have a key or couldn't find her key....he opened the door, she was intoxicated, stumbled through the door, they had to pick her up, him and his son, and help her to the bathroom. Along the way to the bathroom he stated that she fell a few times...she finally went into the bathroom, and stood in there for a few minutes...heard some noises, knocked on the door a couple of times to make sure that she was okay." She told them that she was okay and for them to leave her alone. They kept hearing noise coming from the bathroom and continued to ask if she was alright and she told them she was. At one point, the Respondent opened the door and when she "starts coming out, trips and he goes to grab her to help her to make sure that she doesn't fall." They began to argue with each other and "she kept swinging at him and the son came to help him because she

kept falling.” He stated that she fell about two or three times and the son who also stated to me the same thing...and I guess the last time she fell down he left her on the ground and proceeded to go upstairs to pack some clothes to leave the house.” The Respondent did not mention that he was struck by his son.

While the Respondent was fit for duty, [REDACTED] “was not fit, intoxicated, slurred speech, unsteady, intoxicated.” Rivera also told investigators that [REDACTED] mentioned that she was served with [REDACTED] papers a few days earlier and that she “kept hitting” the Respondent and “arguing with him about his personal life.” (RX C)

The Respondent

The Respondent is a 22-year member of the Department and is currently assigned to the Staten Island District Attorney’s Squad. He testified that he has been married to [REDACTED] for approximately 21 years, but they have lived separately for the past year. He stated that he has three children, a step daughter [REDACTED] his daughter [REDACTED] and son [REDACTED] is the only child that still lives at home fulltime.

The Respondent testified that on January 7, 2007, “there were [REDACTED] problems” between him and [REDACTED] and he had “initiated a [REDACTED] action” where his [REDACTED] was served with [REDACTED] papers a week prior to that date. He testified that his [REDACTED] informed him that she would be going out with a friend of hers, [REDACTED] a friend they had known for many years. He stated that they went out at approximately 5:30 in the afternoon and she came home shortly after 1:00 a.m. The Respondent stated that she was extremely intoxicated and she could not walk on her own. “Her friend, [REDACTED] actually helped her up the stairs to the front of the house and opened up the storm door, at which time -- I don’t recall exactly which one of us actually opened the door, but

but my son and I were at the door. We opened the interior door and assisted her into the house.”

The Respondent supported her under her arm.

The Respondent stated that he was not angry that she went out for drinks with her friend, nor was he angry that she came home in the condition that she did. He added that “when she came in, noticing the state that she was in, what I did tell her was, ‘let me help you upstairs and go to bed.’ She immediately - - when she came in the door, she was argumentative and calling me names, trying to shove me away, you know, bringing up instances of [REDACTED] the [REDACTED] the problems over the course we had in a year, things were my fault that things were that way. She was very argumentative, belligerent and out and out nasty.”

The Respondent described the layout of his house as “on that first floor where she came in through the front door, it opened into a living room. This is about twenty five feet deep going towards the back of the house. There is an archway that goes into a dining room, which is approximately twenty feet long. As you enter the dining room, there is a staircase to the upper floor on your left. Moving deeper into the house, there is a kitchen in the rear which is separated by another archway from the dining room. There is a half bath off to the right side of the kitchen. The kitchen is about twenty feet deep.” He acknowledged that on the first floor there was basically three rooms one right behind the other and the bathroom is in the back room taking up part of the kitchen. With regard to the upstairs he stated “on the top of the stairs there is a bathroom in the rear of the house and three bedrooms.” When his [REDACTED] was calling him names he stated that “we were together in the right hand side of the doorway in the living room.” While he and his son were on the couch watching television waiting for her to come home, he did not remember exactly where he was when his [REDACTED] first came home.

The Respondent testified that as he was “walking her into the house, you know, deeper into the house, towards the back of the house, suggesting that she go upstairs and get changed

and go to bed. We are walking in that direction towards the stairs, all the time she is argumentative. As we get to the dining room, that's when she insists, 'I want to go to the bathroom, I want to go to the bathroom,' so I just - - you know, trying to reason, which there was no reasoning with her. There is a bathroom upstairs, a bedroom upstairs, but she insisted on going to the bathroom on the first floor. I helped her to the bathroom on the first floor, which she went inside the bathroom and she closed the door behind her. She slammed the door shut. While she was in the bathroom there was a lot of thrashing around. She was very unsteady on her feet. Obviously that's what I saw when she came in. There is a wire rack on the back of the bathroom door with hair spray and gels and things like that on it. I heard her crash into the door at least once. I heard all the products rattling on the wire. There is a large shelf in there that is surrounded by the tile. There are other products on it. I heard those falling about, crashing about. My initial thought was that if she hits her head on the porcelain she was going to be severely injured, so at one point I knocked on the door, I asked her, 'are you okay?' She said she is okay, but I am still hearing this falling about, so I attempt to get into the door and she slammed it shut on me. So at that point, I back away. I actually went into the living room again. The noise and rattling around, the banging around continues, and my son got up, my son actually went to the bathroom door, knocked on the door. She said 'leave me alone, get away from me.' He reached the door and opened the bathroom door and assisted her out at that point."

The Respondent further testified that once his son had the door open he believed that it was not proper for his son to help her up the stairs. Therefore he went back to help her and began to support her by holding her up. His son went back into the living room. He further stated "I am walking out of the bathroom, which is a few steps into the kitchen, and she is insisting that she be left alone. So as I come into the dining room, she wants to be left alone, I let her go. She takes a step or two and she falls to her left. We had a dog at that time. The dog's

crate was to the left. She falls into that. I didn't see if she hit her head, whether she hit her head, but she fell to her left and she was awfully close to that crate. It looked like she hit her head on the corner of the crate. My son comes back into the room, we hold her up again. I have her under the arm trying to support her. He is getting a little embarrassed and rattled at this point. Again, I don't know exactly what he did. He was there for a while. I think he went back into the living room again. At this point, [REDACTED] is really just yelling, cursing, calling me names she is slapping me, swinging her arms, she is pulling my hair and she hit me a few times. I am trying to just get her arms so I can hold her up and get her upstairs, put her to bed. At this point, she hits me twice in the back of the head, that I remembered, because I kind of turned a little bit, and at that point I stepped away from her, I am facing the back of the house, so I stepped back towards the living room and her back is facing the back of the house, she is facing towards the kitchen. I back away and I extended my arms just to prevent her blows from hitting me in the face and the head anymore. At that point, I am not holding on to her and she falls back. She falls back into her rear end and then she fell back, you know, in like a secondary motion onto her back. She did not hit her forehead; she did not hit her temple area. She fell straight back onto her back where she laid for a couple of seconds."

The Respondent acknowledged that while his [REDACTED] was falling, his back was to his son. He further explained that during the time that she was being physical with him he was backing away and extended his arms in a defensive manner to avoid being slapped and scratched by her. When asked if he had any physical contact with her at that point he stated "I had her arms, but at that point [if] I let go of her arms, there was contact there. I did not move forward, I did not shove her. I was not aggressive. She was the aggressor in the circumstance. I was stepping back and extended my arms to prevent from getting slapped. I did not shove her chest; I did not

have her hands and shove her back. I had her under the elbow, certainly of one arm, I don't know if two, I let her go and extended my arms I did not shove her."

The Respondent further testified that after his [REDACTED] fell to the floor his back was towards his son and he was not sure what his son actually observed. He stated that "my son came running towards me, through the living room, and there is actually a sectional couch there that doesn't fit, it blocks half the archway. So he was coming past me, I guess to go check on his mother. As he came past me, there was some contact there. He - - you know, whether he was trying to shove me out of the way or what, he hit me in the head. That's how I got the bump on my head. I kind of reassured him that no one is, you know, getting beat up or anything here. He calmed down, he helped his mother up and I sat on the couch." He further stated that at that point his [REDACTED] went upstairs and changed out of her clothes and into her bath robe. During the point of her going upstairs, he stated that while she continued to comment about him being unfaithful and unfair to her, she did not complain about him shoving her or hitting her.

The Respondent stated that when his [REDACTED] came down the stairs, he told her "why don't you go to bed ... why did you come back downstairs, why don't you go to bed?" At that point, "she was still yelling all sorts of things" at him and that she told him that she had "a bump on my head, you made a bump on my head, I am calling 911." He further stated that his [REDACTED] then called 911 using the telephone in the living room and through her slurred speech she was trying to say that he had assaulted her and for the officers to respond to the house at [REDACTED] which is their next door neighbor's address. The Respondent stated that he "actually told [REDACTED] 'tell them [REDACTED] no [REDACTED]' because I didn't want the cops going to the neighbor's house at 1:15 in the morning. So I gave her the proper address that she relayed a second time to the 911 operator and shortly thereafter the 68 responded."

After his [REDACTED] called 911 he went upstairs and started to gather some clothes because he knew at that point he was not going to stay at the house that night. He added that when the officers arrived from the 68 Precinct, he was putting clothes in the back seat of his car that was parked in front of the house. He stated that when the officers arrived there was a male and a female officer known as [REDACTED] and Currie-Dillon and he told them "my [REDACTED] called, she is inside, I am on the job, I am a detective and I am just putting my stuff in the car, I am not leaving, I am not going anywhere. I said 'if you don't mind I want to put as much clothes in the car because I am not staying here tonight' and they were okay with that." He added that the officers interviewed his [REDACTED] in the house because "she could not stand up at that point so they didn't want to transport her, have her fall down at the precinct so they did the interview in the house."

On cross-examination, he stated that when his [REDACTED] came home arguing and yelling he did not leave the house at that point; rather he "attempted to assist her at that point. My intention was to help her to bed where I think that she belongs when and you worry about the hang over in the morning." He explained the physical nature of his assistance would be to support her to stand up and not fall down and injure herself." He stated that he did not recall his [REDACTED] asking him or his son for any assistance. He added that "I know she was cursing and complaining about the [REDACTED] problems. I don't remember her saying 'get off me, leave me alone.'" He further explained that he assisted his [REDACTED] from the front door through the living room and towards the back bathroom, a distance of approximately 40 to 45 feet. When the Respondent was asked if his son in fact punched him he stated "there was contact made. I would say he punched me, yeah."

FINDINGS AND ANALYSIS

The Respondent is charged with engaging in a physical altercation with his [REDACTED] in that he shoved her causing her to fall to the floor and hit her head. I find the Respondent Not Guilty.

The only evidence presented in this case was hearsay. A review of that evidence convinced this Court that [REDACTED] lost her balance several times causing her to fall at various locations of her home due to her intoxication. No credible evidence was presented to convince this Court that she hit the floor from any deliberate action taken by the Respondent.

[REDACTED] and her son chose not to appear and testify at trial. Without their testimony this Court had to rely on their hearsay statements to determine the credibility of the allegations made by [REDACTED] against the Respondent. Hunter-Clark interviewed [REDACTED] and her son [REDACTED] over the telephone, on January 22, 2007. According to Hunter-Clark, [REDACTED] told her that she was upset that the Respondent served her with [REDACTED] papers and that he was having an [REDACTED] with a younger woman.

She also told Hunter-Clark that she was out drinking with a girlfriend on January 7, 2007, and when she arrived home at 1:00 a.m. "she was under the influence of alcohol" and that she was "tipsy" and her friend helped her to the door of her house. The Respondent then assisted her as she entered the house, but she claimed that he did so "aggressively." When asked to explain what she meant by "aggressively" she would only say that he grabbed her arm.

After she was helped into the house she went to the upstairs bathroom and removed her boots. While removing her boots she claimed that one or both dropped to the floor and the resulting noise brought the Respondent and her son upstairs to make sure she was okay. She denied that she fell in the bathroom. She made no mention of falling down on her own.

After refusing their offered help, she began arguing with the Respondent over his [REDACTED] and the argument continued as they walked downstairs and to the kitchen. Once they were in the kitchen area "they were up in each other's face and he grabbed her and shoved her." She admitted that her "hands were in his face" but she did not admit to physically touching him. She claimed that when he shoved her it caused her to fall back and when she hit the floor the left

side of her head hit the wooden saddle that separates the kitchen and the dining room. According to [REDACTED], her son, who was in the living room, then came over and punched the Respondent in the face, pushed him out of the way and helped her off the floor. She then went back upstairs, changed her clothes and called the police. She admitted that she was loud and "hysterical" during this incident.

After completing her interview with [REDACTED], Hunter-Clark also interviewed their son [REDACTED]. He told her that when his mother "came home drunk" the Respondent helped her into the house. After she went upstairs they heard a noise and the Respondent went upstairs to make sure she was okay and after she exited the bathroom his parents began to argue. He also stated "at that time she did fall and he helped her up." They then went downstairs and continued to argue. She fell again and they both helped her up. The son went into the living room and they went into the kitchen area. At one point, he sees them "tangled up with each other." He then saw his father "shove his mother" and she fell to the floor. He then went to them, moved his father away and helped his mother. He made no mention of striking his father.

The concern this Court has with these hearsay statements is that they leave many questions unanswered. For example, if [REDACTED] was as intoxicated as the hearsay statements indicate then what clarity of mind did she possess to know exactly what was occurring during her "hysterical" encounter with the Respondent? Did she remember falling on her own and being helped by the Respondent and her son? When her hands were in the Respondent's face did she remember if she struck him, if not, then what exactly were they doing in his face? If she did remember these instances then why did she not inform Hunter-Clark of their occurrences? In addition, what exactly did the son, who was situated in the living room, see when he saw his mother fall? Did he actually see the Respondent make contact with her or just extend his arms? It is also noteworthy that Hunter-Clark believed that the son may have been present in the room

when she was interviewing his mother. If so, did his mother's presence influence what he told Hunter-Clark? Without their live testimony subject to cross examination, this Court is left in a void with many unanswered questions that challenge the credibility of their statements.

In contrast, the Respondent credibly testified that there were marital problems between him and his [REDACTED] and that he served her with divorce papers. He informed the Court that on January 7, 2007, [REDACTED] came home extremely intoxicated and had difficulty walking on her own. Her friend, [REDACTED] had to help her to the house and he and his son had to assist her into the house. According to the Respondent, from the minute she entered the house "she was argumentative" and called the Respondent names, "bringing up instances of [REDACTED] in the [REDACTED]..." Because of her intoxicated condition he wanted her to go upstairs to bed, but she insisted on going to the bathroom downstairs. While she was in the bathroom he heard noises which indicated to him that she was falling into the wire rack containing shelves with hairspray and other similar items. As the noise continued his son knocked on the door and she told him to get away from her. The son then opened the door and assisted her out. The Respondent then went to her and held her up to prevent her from falling. His son went into the living room. [REDACTED] then insisted on being left alone and the Respondent let her go and walked into the dining room. She then falls into a crate used for their dog and it appeared that she hit her head on the corner of the crate. The son came back to her and both of them held her up again. The son then returned to the living room and she is yelling and calling the Respondent names. She is also slapping and swinging her arms at him, pulling his hair and she hit him "a few times." The Respondent stated that at that point he is trying to hold her arms so that he can hold her up and get her upstairs to bed. She continued to hit him in the back of the head and he then stepped away from her. According to the Respondent, during her tirade his back was facing the living where his son was located. He then back away and extended his arms to prevent her blows from hitting him in the

face and head. At that point, he was not holding on to her and she fell backward. He explained that "she falls back into her rear end and then she fell back, you know, in like a secondary motion onto her back. She did not hit her forehead; she did not hit her temple area. She fell straight back onto her back where she laid for a couple of seconds." While his [REDACTED] was falling, his back was still to his son. He further explained that during the time that she was being physical with him he was backing away and he extended his arms in a defensive manner to avoid being slapped and scratched by her. He emphatically stated that the physical contact he had with her consisted of him holding "her arms, but at that point [if] I let go of her arms, there was contact there. I did not move forward, I did not shove her. I was not aggressive. She was the aggressor in the circumstance. I was stepping back and extended my arms to prevent from getting slapped. I did not shove her chest; I did not have her hands and shove her back. I had her under the elbow, certainly of one arm, I don't know if two, I let her go and extended my arms I did not shove her." At the point of her falling his son came running towards him, punched him in the face as he ran past him to check on his mother.

After falling to the floor, [REDACTED] went upstairs and changed into her bathrobe. She then called the police, but the Respondent had to remind her that she was giving the 911 operator the address of her neighbor's house for the police to respond to.

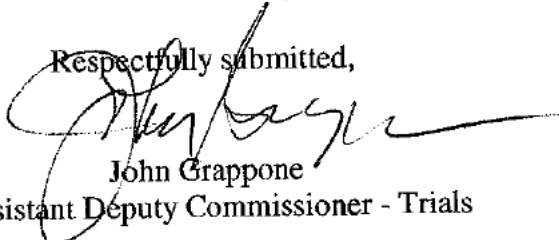
The hearsay statements of the responding officers, Currie-Dillon, [REDACTED] and Rivera confirmed the extent of [REDACTED]'s intoxication and corroborated essential aspects of the Respondent's testimony. Essentially they arrived only minutes after the incident with the Respondent. Their combined statements informed this Court that while [REDACTED] told them that the Respondent pushed her, she also admitted to falling in the bathroom and hitting her head, and falling in another part of the house. They also observed her falling on her own while they were present in the house and falling down part of the stairs after changing her clothes.

She ultimately gave two different statements to Rivera as to how she bumped her head: she told Rivera that "as she was exiting the bathroom she tripped over the ... saddle between the bathroom and the kitchen. And when she tripped on the saddle she hit her head against the wall. And right after she said that to me she said that she got into a verbal altercation with her [REDACTED] and she started swinging at him and then she said, she stated that he shoved her to the ground and that's how she bumped her head." The officers described [REDACTED]'s condition as "very intoxicated" and "extremely intoxicated" and "pretty embarrassing."


Based on the foregoing, this Court cannot find that the Respondent deliberately shoved or pushed [REDACTED] to the floor. It is more likely that after his attempts to keep her from falling she ultimately fell on her own due to her intoxicated condition.

Accordingly, I find the Respondent Not Guilty as charged.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner - Trials

APPROVED


OCT 14 2008
RAYMOND W. KELLY
POLICE COMMISSIONER